

Department of Homeland Security

§ 335.10

be denied pursuant to § 336.1 of this chapter.

[56 FR 50498, Oct. 7, 1991, as amended at 58 FR 49914, Sept. 24, 1993; 76 FR 53801, Aug. 29, 2011]

§ 335.6 Failure to appear for examination.

(a) An applicant for naturalization shall be deemed to have abandoned his or her application if he or she fails to appear for the examination pursuant to § 335.3 and fails to notify USCIS of the reason for non-appearance within 30 days of the scheduled examination. Such notification shall be in writing and contain a request for rescheduling of the examination. In the absence of a timely notification, USCIS may administratively close the application without making a decision on the merits.

(b) An applicant may reopen an administratively closed application by submitting a written request to USCIS within one (1) year from the date the application was closed. Such reopening shall be without additional fee. The date of the request for reopening shall be the date of filing of the application for purposes of determining eligibility for naturalization.

(c) If the applicant does not request reopening of an administratively closed application within one year from the date the application was closed, USCIS will consider that application to have been abandoned, and shall dismiss the application without further notice to the applicant.

[58 FR 49914, Sept. 24, 1993, as amended at 60 FR 6651, Feb. 3, 1995; 76 FR 53801, Aug. 29, 2011]

§ 335.7 Failure to prosecute application after initial examination.

An applicant for naturalization who has appeared for the examination on his or her application as provided in 8 CFR 335.2 will be considered as failing to prosecute such application if he or she, without good cause being shown, either failed to excuse an absence from a subsequently required appearance, or fails to provide within a reasonable period of time such documents, information, or testimony deemed by USCIS to be necessary to establish his or her eligibility for naturalization. USCIS will deliver notice of requests for appearance or evidence as provided in 8 CFR

103.8. In the event that the applicant fails to respond within 30 days of the date of notification, USCIS will adjudicate the application on the merits pursuant to 8 CFR 336.1.

[76 FR 53801, Aug. 29, 2011]

§ 335.8 [Reserved]

§ 335.9 Transfer of application.

(a) *Request for transfer of application.* An applicant who, after filing an application for naturalization, changes residence, or plans to change residence within three months, may request, in writing, that a pending application be transferred from the current USCIS office to the USCIS office having jurisdiction over the applicant's new place of residence. The request shall be submitted to the office where the application was originally filed. The request shall include the applicant's name, alien registration number, date of birth, complete current address including name of the county, complete address at the time of filing the application, reason for the request to transfer the application, and the date the applicant moved or intends to move to the new jurisdiction.

(b) *Discretion to authorize transfer.* The USCIS may authorize the transfer of an application for naturalization after such application has been filed. In the event that the USCIS does not consent to the transfer of the application, the application shall be adjudicated on its merits by USCIS office retaining jurisdiction. If upon such adjudication the application is denied, the written decision pursuant to § 336.1 of this chapter shall also address the reason(s) for USCIS's decision not to consent to the transfer request.

[56 FR 50498, Oct. 7, 1991, as amended at 58 FR 49914, Sept. 24, 1993; 76 FR 53801, Aug. 29, 2011; 76 FR 73477, Nov. 29, 2011]

§ 335.10 Withdrawal of application.

An applicant may request, in writing, that his or her application, filed with USCIS, be withdrawn. If USCIS consents to the withdrawal, the application will be denied without further notice to the applicant and without prejudice to any future application. The withdrawal by the applicant will constitute a waiver of any review pursuant

to part 336 of this chapter. If USCIS does not consent to the withdrawal, the application for naturalization shall be adjudicated on its merits.

[56 FR 50498, Oct. 7, 1991, as amended at 76 FR 53801, Aug. 29, 2011]

PART 336—HEARINGS ON DENIALS OF APPLICATIONS FOR NATURALIZATION

Sec.

336.1 Denial after section 335 examination.

336.2 USCIS hearing.

336.3–336.8 [Reserved]

336.9 Judicial review of denial determinations on applications for naturalization.

AUTHORITY: 8 U.S.C. 1103, 1443, 1447, 1448.

SOURCE: 56 FR 50499, Oct. 7, 1991, unless otherwise noted.

§ 336.1 Denial after section 335 examination.

(a) After completing all examination procedures contained in part 335 of this chapter and determining to deny an application for naturalization, USCIS will serve a written notice of denial upon an applicant for naturalization no later than 120 days after the date of the applicant's first examination on the application.

(b) A notice of denial shall be prepared in a written, narrative format, and shall recite, in clear concise language, the pertinent facts upon which the determination was based, the specific legal section or sections applicable to the finding of ineligibility, and the conclusions of law reached by the examining officer in rendering the decision. Such notice of denial shall also contain a specific statement of the applicant's right either to accept the determination of the examining officer, or request a hearing before an immigration officer.

(c) Service of the notice of denial must be by personal service as described in 8 CFR 103.8, or upon the attorney or representative of record as provided in part 292 of this chapter.

[56 FR 50499, Oct. 7, 1991, as amended at 76 FR 53802, Aug. 29, 2011]

§ 336.2 USCIS hearing.

(a) The applicant, or his or her authorized representative, may request a

hearing on the denial of the applicant's application for naturalization by filing a request with USCIS within thirty days after the applicant receives the notice of denial.

(b) Upon receipt of a timely request for a hearing, USCIS will schedule a review hearing, within a reasonable period of time not to exceed 180 days from the date upon which the appeal is filed. The review will be with an officer other than the officer who conducted the original examination or who rendered determination upon which the hearing is based, and who is classified at a grade level equal to or higher than the grade of the examining officer. The reviewing officer will have the authority and discretion to review the application for naturalization, to examine the applicant, and either to affirm the findings and determination of the original examining officer or to re-determine the original decision in whole or in part. The reviewing officer will also have the discretion to review any administrative record which was created as part of the examination procedures as well USCIS files and reports. He or she may receive new evidence or take such additional testimony as may be deemed relevant to the applicant's eligibility for naturalization or which the applicant seeks to provide. Based upon the complexity of the issues to be reviewed or determined, and upon the necessity of conducting further examinations with respect to essential naturalization requirements, such as literacy or civics knowledge, the reviewing immigration officer may, in his or her discretion, conduct a full *de novo* hearing or may utilize a less formal review procedure, as he or she deems reasonable and in the interest of justice.

(c) *Improperly filed request for hearing.*
(1) *Request for hearing filed by a person or entity not entitled to file.* (i) *Rejection without refund of filing fee.* A request for hearing filed by a person or entity who is not entitled to file such a request must be rejected as improperly filed. In such a case, any filing fee will not be refunded.

(ii) *Request for hearing by attorney or representative without proper Form G–28.* If a request for hearing is filed by an attorney or representative who has not